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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/714,340	11/16/2000	William N. Weaver	ITW-12833	6496

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Kevin D Erickson  
Pauley Peterson Kinne & Fejer  
2800 West Higgins Road Suite 365  
Hoffman Estates, IL 60195

EXAMINER

TRAN, LOUIS B

ART UNIT	PAPER NUMBER
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3721

DATE MAILED: 01/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

HCT

**Office Action Summary**

Application No.

09/714,340

Applicant(s)

WEAVER ET AL .

Examiner

Louis B Tran

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 November 2002 .
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_ .
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_ .
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ .                      6) ☐ Other: \_\_\_\_\_ .

**DETAILED ACTION**

1. This action is in response to applicant's amendment, Paper No. 7, received on 11-18-2002.

***Terminal Disclaimer***

2. The terminal disclaimer filed on 11/18/2002 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of US Patent 6,122,893 has been reviewed and is accepted. The terminal disclaimer has been recorded.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krogman et al. (5,383,321) in view of Fisher (3,044,230).

A system for packaging multiple containers comprising the steps of moving a carrier 12 through an applying machine 10, the carrier 12 constructed of flexible plastic having a plurality of elongated apertures 18 aligned in transverse ranks which elongated apertures are oriented in a longitudinal direction of the carrier and have a longitudinal pitch between a center of each adjacent elongated aperture (as in Figure 3),

the longitudinal pitch having a first length, moving a plurality of containers 14 through the applying machine, positioning the carrier over the plurality of containers whereby each elongated aperture engages with one of the containers to form a package having a container pitch between a center of adjacent containers approximately equal to a second length (as in claim 1), wherein the carrier further comprises a plurality of relief holes positioned between adjacent longitudinal rows of elongated apertures (as in claim 3), wherein longitudinal extremities of the relief holes overlap end portions of adjacent elongated apertures in the longitudinal direction (as in claim 4) as seen in Figure 3, but does not explicitly show each container of the plurality of containers having a maximum diameter having a second length shorter than the first length spaced apart from an adjacent container by the applying machine at the first length, and positioning the carrier over the plurality of containers whereby each elongated aperture engages with one of the containers to form a package having a container pitch between a center of adjacent containers approximately equal to the second length (as in claim 1) and elongated apertures in an unstressed condition prior to application to the plurality of containers, are approximately four to six times longer than wide (as in claim 2).

However, Fisher teaches the use of an overall length of a carrier is reduced after the carrier is positioned over a plurality of containers 32 to form a package as seen in Figures 2 compared to Figure 4 (as in claim 8), each container 32 of the plurality of containers having a maximum diameter having a second length (seen in Figure 4) shorter than the first length (seen in Figure 2 and 1) and each container of the plurality of containers spaced at the first length spaced apart from an adjacent container

by the applying machine (as in claim 1) and elongated apertures in an unstressed condition prior to application to the plurality of containers, are approximately four to six times longer than wide seen in Figure 2 of Fisher (as in claim 2) for the purpose of forming a tenacious grip on the containers as indicated in column 2, line 67 of Fisher.

Therefore, it would have been obvious to one having ordinary skill in the art to provide Krogman et al. with a first and second length in order to create a tenacious grip withstanding regular wear.

With respect to claim 5, the modified device of Krogman et al. does not explicitly state that the first length is approximately 3.0"; however, it would have been obvious to one having ordinary skill in the art at the time the invention was made to find an optimum first length value, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

With respect to claim 6, the modified device of Krogman et al. does not explicitly state that the second length is approximately 2.6"; however, it would have been obvious to one having ordinary skill in the art at the time the invention was made to find an optimum second length value, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

With respect to claim 7, the modified device of Krogman et al. does not explicitly state a first length to second length ratio of 1.15; however, it would have been obvious to one having ordinary skill in the art at the time the invention was made to find an

optimum first to second length ratio, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

5. Claims 9-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krogman et al. in view of Fisher.

Krogman et al. discloses the invention substantially as claimed including a plurality of relief holes positioned between adjacent longitudinal rows of elongated apertures seen in Figure 3 (as in claim 10) an applying system comprising an applying machine 10 accommodating a plurality of containers 14 spaced at intervals by the applying machine and the carrier having adjacent longitudinal rows of elongated apertures with a longitudinal pitch between each elongated aperture, seen in Figure 3, having a first length that is greater than the maximum diameter and, after application to the plurality of containers juxtaposed relative to one another, the container pitch between adjacent containers within the carrier is inherently at a second length but does not show a second length less than the first length and approximately equal to the maximum diameter.

However, Fisher teaches the use of a second length (examiner marked Y) less than the first length (examiner marked X) and approximately equal to the maximum diameter seen in Figures 4 and 2 for the purpose of forming a tenacious grip on the containers as indicated in column 2, line 67 of Fisher.

Therefore, it would have been obvious to one having ordinary skill in the art to provide Krogman et al. with a first and second length in order to create a tenacious grip withstanding regular wear.

With respect to claim 10, the modified device of Krogman et al. does not explicitly state that the first length is approximately 3.0"; however, it would have been obvious to one having ordinary skill in the art at the time the invention was made to find an optimum first length value, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

With respect to claim 12, the modified device of Krogman et al. does not explicitly state that the second length is approximately 2.6"; however, it would have been obvious to one having ordinary skill in the art at the time the invention was made to find an optimum second length value, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

With respect to claim 13, the modified device of Krogman et al. does not explicitly state a first length to second length ratio of 1.15; however, it would have been obvious to one having ordinary skill in the art at the time the invention was made to find an optimum first to second length ratio, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

***Conclusion***

6. Applicant's remarks have been fully considered but are deemed non-persuasive.

Applicant contends that it is improper to make a comparison between Figure 2 and 4 since they appear to be in different scales.

However, it is the examiner's position that the scale of the drawings is irrelevant to what is being taught by the Figures. One skilled in the art who would look at Figure 2 and 4 would recognize that the aperture 12 is in a stretched large first length position in Figure 2 and a shortened product carrying position of a second length in Figure 4.

Applicant contends that the carrier having an aperture having a peripheral measurement less than the periphery of an individual container is proof that the second length of container pitch following application to containers is greater than the first length or carrier pitch.

This is not persuasive. The mere fact that an aperture having a peripheral measurement less than the periphery of an individual container is not proof that the second length of a container pitch. The container periphery is not what solely defines the second length. As clearly seen in Figure 4, there is a stretching of the plastic material 10 in a transverse direction primarily from the fitting of the containers that clearly creates a second length that is shorter. An even more exaggerated example of this is in Figure 1 where clearly there is a very long first length and shortened second length after fitting of containers into the plastic material.

Applicant contends that again since there is stretching of the slits 12 then the apertures will be larger following insertion of the cans. Therefore, the second length will



be larger. Examiner contends that the applicant's material also has stretching in order to grip the product in the plastic material. Otherwise, the plastic material would not work as a carrier. Therefore, if applicant is claiming that stretching causing a larger aperture and less second length, then by this reasoning, the applicant's invention would *not* have a shorter second length. Of course, applicant's invention does have a shorter second length therefore the mere fact that stretching occurs clearly has no bearing on the second length.

For the reasons above, the grounds of rejection are deemed proper.

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Louis B Tran whose telephone number is 703-305-0611. The examiner can normally be reached on 8AM-6PM Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on 703-308-2187. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3579 for regular communications and 703-305-3579 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

lbt  
January 9, 2003

A handwritten signature in black ink, appearing to read 'Rinaldi I. Rada', with a long horizontal line extending to the right.

Rinaldi I. Rada  
Supervisory Patent Examiner  
Group 3700